STATE OF MICHIGAN

COURT OF APPEALS

CALVIN ARTHUR SMITH, Plaintiff-Appellee,	UNPUBLISHED May 11, 2006
v	No. 258970 Ionia Circuit Court
ANNE KATHLEEN SMITH, Defendant-Appellant.	LC No. 01-021472-DO

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals by right the trial court's rulings regarding property disposition incorporated in a judgment of divorce entered October 18, 2004. We affirm.

First, defendant contends the trial court erroneously used plaintiff's appraisal of the parties' real property. We disagree. We first review the trial court's findings of fact for clear error and then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). "A finding is 'clearly erroneous' if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been committed." *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). "[D]ecisions regarding the time of valuation of property in a divorce action are matters within the discretion of the trial court." *Gates v Gates*, 256 Mich App 420, 427; 664 NW2d 231 (2003).

Trial courts have great latitude in arriving at a final valuation of a marital asset on the basis of divergent testimony as to the asset's value. *Pelton, supra* at 26. "The trial court may, but is not required to, accept either parties' valuation evidence." *Id.* at 25. "[W]here a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

Each party hired an appraiser to ascertain the value of the parties' 120-acre and ten-acre farms (commonly referred to as the Fahey farm). Plaintiff's appraiser, Thomas Bosserd, appraised the 120-acre property for $667,000 and the 10-acre property for $81,000. Defendant's appraiser, Dennis Makula, appraised the property as one parcel of land for $507,000. The court determined Bosserd's appraisal was more credible, and valued the property accordingly. A trial court is in the best position to judge the credibility of the witnesses. *Pelton, supra* at 26.

Bosserd explained in detail the method he used to determine the properties' values, and "where a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Jansen, supra* at 171. The reason the two appraisers assigned differing values to the property was because they used different comparables. The appraiser's decision on which comparables to use was nothing more than a professional opinion. As noted above, trial courts are in the best position to judge the credibility of the witnesses and are given great latitude in arriving at a final valuation of a marital asset where the court has been presented with divergent testimonies as to the asset's value. *Pelton, supra* at 26. Accordingly, the trial court's findings with regard to the acceptability of Bosserd's appraisal were not clearly erroneous, and the trial court did not err in adopting Bosserd's appraisal in determining the value of the marital property.

Next, defendant contends the trial court found that the date to use for the division of property was the time of the filing of divorce, and Bosserd's appraisal was completed one year after the divorce was filed. Therefore, defendant argues that the trial court should have reduced the value of the parties' real property by 6% in order to compensate for the rate of inflation. We disagree. The only testimony presented to the court relative to the rate of inflation was from Makula, but the trial court found that his testimony was not credible. The trial court is in the best position to judge the credibility of the witnesses. *Id.* Accordingly, the trial court did not abuse its discretion in declining to reduce the value of the property by 6%.

Next, defendant contends the trial court erroneously included the down payment she made on the Fahey farm as part of the parties' marital assets. The trial court provided two explanations for its refusal to grant defendant credit for the alleged down payment: (1) there was no documented proof that defendant made the down payment, and (2) even if she had made the down payment, it had been commingled with the parties' marital assets. We conclude that although the trial court's findings of fact were erroneous, the trial court properly distributed the separate property nonetheless.

When one party makes a down payment on a property before the parties' marriage, that payment is generally considered separate property. *Reeves v Reeves*, 226 Mich App 490, 496; 575 NW2d 1 (1997).

Defendant introduced into evidence a land contract referencing defendant's down payment and testified that the contract was for the purchase of the property from her parents. She stated that she made the $15,000 down payment in cash and explained that she earned the money by working at the University of Michigan before the parties were married. Therefore, without determining the validity of the land contact, the trial court's finding that there was no documented proof of the $15,000 down payment was clearly erroneous.

The parties' testimony does not indicate that the identity of the down payment commingled with the parties' marital property or funds. Separate property does not commingle automatically as a result of a lengthy marriage. Therefore, the fact that the parties were married for over 30 years does not render a down payment defendant made before the marriage marital property at the dissolution of the marriage. *Id.*

Additionally, the parties lived primarily in the Fahey farmhouse during their marriage, and never sold it. Cf. *Pickering v Pickering*, 268 Mich App 1, 12-13; 706 NW2d 835 (2005)

(although one party provided the down payment for the parties' initial marital home, where the parties sold the home and used the proceeds to purchase another marital home in both the parties' names, the disputed down payment lost all characteristics of being a separate property). Therefore, because the parties maintained the property for which defendant allegedly made the down payment, the independent and separate nature of the down payment was readily identifiable and distinguishable from the remaining balance of the property in which both parties had an interest as marital property. Accordingly, the trial court's finding that the down payment was commingled with the parties' marital assets was erroneous.

Nevertheless, defendant should not have been given credit for the alleged $15,000 down payment. As noted above, down payments are generally considered separate property; however, a trial court can distribute separate property when one of two statutorily created exceptions is met. *Reeves, supra* at 494-495.

MCL 552.23(1) provides that "if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage as are committed to the care and custody of either party, the court may further award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate . . . ." Both parties were awarded substantial assets, and neither party has claimed that the awarded assets were insufficient to provide for his or her maintenance. Additionally, at the time of the divorce, the parties' three children were all of the age of majority, and therefore custody was not at issue. Accordingly, MCL 552.23(1) is inapplicable.

MCL 552.401 provides that the court may distribute separate property "if it appears . . . that the party contributed to the acquisition, improvement, or accumulation of the property." Defendant did not work outside of the home after the parties had been married for one year. Although defendant worked on the parties' farm, the income derived from the farming efforts was minimal. Plaintiff continually worked at the Adrian public schools throughout the parties' marriage until he was diagnosed with cancer in 1993, at which time he retired. Plaintiff also assisted defendant on the farm during nights, weekends, and school vacations. Throughout the marriage, the family primarily relied upon plaintiff's income, pension benefits, and disability payments. Therefore, plaintiff's steady income and assistance on the farm allowed the parties to maintain the farm and make any necessary improvements or updates as were required throughout the marriage. Accordingly, even if defendant had provided $15,000 as a down payment for the farm, this separate property was distributable pursuant to MCL 552.401.

Next, defendant contends the court erred in finding that any property she brought to the marriage was commingled with the marital assets. We disagree. "In dividing marital assets, the goal is to reach an equitable division in light of all the circumstances." *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 395 (2002). In doing so, "[t]he trial court is given broad discretion in fashioning its rulings and there can be no strict mathematical formulations." *Sparks, supra* at 158-159.

Defendant never provided the court with an inventory of the personal property she believed she brought to the marriage. The trial court was unable to find any references to specific heirloom items or farm equipment throughout defendant's extensive testimony. Because defendant failed to provide the court with an inventory of her family heirlooms or other property she brought into the marriage, and there was no testimony requesting any specific items, the trial

court did not abuse its discretion in ordering a private auction for any items upon which the parties could not agree were separate property.

Next, defendant contends it was inequitable for the court to award plaintiff the parties' van. We disagree. The parties owned a van that was titled in defendant's name. Plaintiff took the van when he left the marital home. Throughout the course of the litigation, plaintiff filed motions requesting that defendant return the van's license plates, tabs, and title. Eventually, plaintiff left the van on defendant's aunt's property with a note stating that the van had 200,000 miles on it and needed various repairs. Plaintiff then purchased a new vehicle. Defendant testified that after plaintiff dropped off the van, she began to drive it, but, defendant also purchased another car. The court awarded defendant the van, in part, because plaintiff failed to cooperate in getting plaintiff the title and insurance so he could drive it. Therefore, based on the parties' testimonies and a review of the numerous motions plaintiff filed requesting the court's assistance in obtaining the van's title, tabs, and registration, the trial court's findings with regard to the van were not clearly erroneous. Accordingly, given the broad discretion trial courts are given in dividing assets in a divorce proceeding, the trial court did not abuse its discretion in awarding plaintiff the van. *Sparks, supra* at 159.

Finally, defendant contends the court erroneously failed to consider the expense of the property taxes she had while plaintiff was absent from the marital home. We disagree. Throughout the lengthy course of this litigation, defendant never requested that the court award her credit for any payments she made on the property taxes. Similarly, defendant never presented to the court any documentation indicating that she paid the property taxes. Therefore, defendant provided neither factual support for her position that she paid the property taxes nor supporting authority for her position that she is entitled to a credit for the alleged payments. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted). Accordingly, the trial court did not err in failing to give defendant credit for the property taxes defendant claims she made.

We affirm.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Jane E. Markey